

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JEFF FULLER,
Plaintiff,
v.
ZEP INC., et al.,
Defendants.

Case No. [18-cv-02672-JSW](#)

**ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL**

Re: Dkt. No. 46

This matter comes before the Court upon consideration of the unopposed motion for preliminary approval of a class action settlement and the Joint Stipulation of Class Action Settlement and Release (“Settlement” or “Agreement”). The Court has considered the moving papers, declarations, the supplemental briefing and exhibits submitted on August 12, 2019, and the record in this case. The Court finds the motion suitable for disposition without oral argument. *See* N.D. Civ. L.R. 7-1(b). The Court VACATES the hearing scheduled for August 23, 2019, and it HEREBY GRANTS the motion.

1. The Court hereby grants preliminary approval of the proposed Settlement upon the terms and conditions set forth in the Agreement. The Court preliminarily finds that the terms of the proposed Settlement are fair, adequate and reasonable, and that they comply with Rule 23(e) of the Federal Rules of Civil Procedure (“FRCP”). The Court hereby adopts and incorporates by this reference the recitals, terms and conditions of the Settlement.

2. The Court preliminarily finds that the Settlement is the product of serious, informed, non-collusive negotiations conducted at arm’s-length by the Parties. In making these

1 preliminary findings, the Court considered, among other factors, the potential damages claimed in
2 the lawsuit on behalf of Plaintiff and members of the Settlement Class (which totals 289
3 individuals), Defendants' potential liability, the risks of continued litigation including trial
4 outcome, delay and potential appeals, the substantial benefits available to the Settlement Class as a
5 result of the Settlement, the Parties' participation in multiple mediations with an experienced class
6 action mediator, and the fact that the proposed Settlement represents a compromise of the Parties'
7 respective positions rather than the result of a finding of liability at trial. The Court further
8 preliminarily finds that the terms of the Settlement have no obvious deficiencies and do not
9 improperly grant preferential treatment to any individual member of the Certified Class.
10

11 3. The Court approves the proposed manner of the notice of Settlement set forth in the
12 Agreement. The Court also approves the size and contents of the Notice of Proposed Class Action
13 Settlement as revised on August 12, 2019. (*See* Dkt. No. 51, Supp. Br. Ex. A at ECF pp. 18-28.)
14 However, the Court directs the parties to ensure they correct any references to the final approval
15 hearing date in 2019 to ensure that date is 2020. (*See* Proposed Notice at 2:1, 4:25-26, 4:28, 8:7,
16 9:2-3.) The parties also shall ensure that the address in paragraph C on page 7 is complete and
17 comports with the address in paragraph A on that page: 1301 Clay Street, Oakland, California,
18 94612.
19

20 4. The Court finds that the proposed manner of the notice of Settlement set forth in
21 the Agreement (and the Notice of Proposed Class Action Settlement most recently submitted,
22 which the Court approves of, as set forth in paragraph 3, above) constitutes the best notice
23 practicable under the circumstances and is in full compliance with the United States Constitution
24 and the requirements of due process. The Court further finds that the notice fully and accurately
25 informs the Settlement Class of all material elements of the lawsuit and proposed class action
26 Settlement, and each Settlement Class Member's right and opportunity to object to the proposed
27 class action Settlement and be heard at the final approval (fairness) hearing.
28

1 5. The proposed plan for mailing the Notice of Proposed Class Action Settlement and
2 Commission Dispute Form by first-class mail to the Settlement Class Members' last-known
3 address is an appropriate method, reasonably designed to reach all individuals who would be
4 bound by the Settlement. There is no alternative method of sending the Notice to the Settlement
5 Class that would be more practicable, and any more reasonably likely to notify the Class
6 Members. The proposed Notice of Proposed Class Action Settlement and the notice plan set forth
7 in the Settlement are the best practicable notice under the facts and circumstances of this case.
8

9 6. The Parties are ordered to carry out the Settlement according to the terms of the
10 Settlement Agreement.

11 7. The Court appoints CPT Group, Inc. ("CPT") as the Claims Administrator.
12 Promptly following entry of this order, CPT will prepare a final version of the Notice of Proposed
13 Class Action Settlement Commission and Dispute Form, incorporating into it the relevant dates
14 and deadlines set forth in this Order and the Settlement Agreement and will commence the notice
15 process in accordance with the scheduling set forth at the end of this Order.
16

17 8. Any Settlement Class Member who desires to object to the Settlement must file
18 with the Court, not later than the deadline identified below, a written statement objecting to the
19 Settlement and setting forth the grounds for the objection. The written statement of objection
20 must indicate whether the Settlement Class Member intends to appear and object to the Settlement
21 at the Final Approval Hearing, and the failure to so indicate will constitute a waiver of the right to
22 appear at the Final Approval Hearing. A Settlement Class Member who does not timely file an
23 objection in the manner and by the Objection Deadline specified below will be deemed to have
24 waived all objections and will be foreclosed from making any objections to the Settlement,
25 whether by appeal or otherwise.
26

27 9. Class Counsel's motion for an award of attorney's fees and costs and the Class
28 Representatives' motion for a service enhancement shall be filed before the final approval (i.e.

“final fairness”) hearing, consistent with the schedule set forth below.

10. The Court will hold a final approval hearing on January 17, 2020, at 9 a.m. in Courtroom 5, 1301 Clay Street, Oakland, California, to consider the fairness, reasonableness and adequacy of the proposed Settlement as well as the award of attorney’s fees and costs to Class Counsel and incentive (service) awards to the Class Representatives. The Court reserves the right to adjourn or continue the final approval (fairness) hearing without further notice to the Settlement Class members.

11. When Plaintiff files the motion for final approval, he shall confirm the date on which CAFA notice was sent.

12. The Court sets the following deadlines:

EVENT	DEADLINE
Defendants to provide Class contact information to Claims Administrator	September 14, 2019
CPT Group to mail notice	<i>By no later than October 5, 2019</i>
Undeliverable Class Notices without forwarding address to be re-mailed to more current address after skip-trace search	As received, during October 2019
Undeliverable Class Notices with a forwarding address re-mailed to forwarding address	As received, during October 2019
Last day for Class Members to submit opt-out requests (assuming October 5th mailing)	December 4, 2019 (but no earlier than 60 days from date of actual mailing)
Last day for Claims Administrator to provide Counsel for Defendants with list of Class Members who have timely submitted valid requests for Exclusion	December 11, 2019 (or one week after opt-out deadline expires)
Last day for Class Counsel to file motion for attorneys’ fees and costs	November 13, 2019 (and no earlier than 21 days before objection deadline)
Last day for Class Members to object to the Settlement	December 4, 2019 (and no earlier than sixty days after actual mailing of notice)

Deadline to file motion for final approval	December 13, 2019
Final Approval Hearing	January 17, 2020 at 9:00 a.m.

If the parties need to modify these deadlines based on the date notice is actually mailed to class members, they shall submit a revised proposed schedule to the Court for approval.

IT IS SO ORDERED.

Dated: August 19, 2019



JEFFREY S. WHITE
United States District Judge